

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE BANK OF NEW YORK MELLON CORP.
FOREX TRANSACTIONS LITIGATION

No. 12-MD-2335 (LAK) (JLC)

THIS DOCUMENT RELATES TO:

*Southeastern Pennsylvania Transportation Authority v.
The Bank of New York Mellon Corporation, et al.*

No. 12-CV-3066 (LAK) (JLC)

*International Union of Operating Engineers, Stationary
Engineers Local 39 Pension Trust Fund v. The Bank of
New York Mellon Corporation, et al.*

No. 12-CV-3067 (LAK) (JLC)

*Ohio Police & Fire Pension Fund, et al. v. The Bank of
New York Mellon Corporation, et al.*

No. 12-CV-3470 (LAK) (JLC)

Carver, et al. v. The Bank of New York Mellon, et al.

No. 12-CV-9248 (LAK) (JLC)

Fletcher v. The Bank of New York Mellon, et al.

No. 14-CV-5496 (LAK) (JLC)

**DECLARATION OF J. BRIAN McTIGUE IN SUPPORT OF
LEAD PLAINTIFFS' UNOPPOSED MOTION FOR (1) PROVISIONAL
CERTIFICATION OF THE SETTLEMENT CLASS; (2) APPOINTMENT OF LEAD
PLAINTIFFS AS SETTLEMENT CLASS REPRESENTATIVES, AND APPOINTMENT
OF LEAD SETTLEMENT COUNSEL AS CLASS COUNSEL; (3) APPROVAL OF THE
PROPOSED FORM AND MANNER OF NOTICE; AND (4) SCHEDULING OF A
FINAL APPROVAL HEARING**

I, J. Brian McTigue, declare:

1. I am a member in good standing of the District of Columbia and California Bars and a partner in McTigue Law LLP ("McTigue Law" or the "Firm"), which serves as counsel for plaintiffs in *Carver, et al. v. The Bank of New York Mellon, et al.*, No. 12-CV-9248-LAK-JLC ("Carver Action"), and *Fletcher v. The Bank of New York Mellon, et al.*, No. 14-CV-5496-LAK-JLC ("Fletcher Action"). I submit this declaration in support of Lead Plaintiffs' Unopposed Motion for (1) Provisional Certification of the Settlement Class; (2) Appointment of Lead

Plaintiffs as Settlement Class Representatives, and Appointment of Lead Settlement Counsel as Class Counsel; (3) Approval of the Proposed Form and Manner of Notice; and (4) Scheduling of a Final Approval Hearing. I have personal knowledge of the matters set forth herein, and could and would testify competently thereto if called upon to do so.

2. In support of McTigue Law's request for appointment—together with the law firms Lieff Cabraser Heimann & Bernstein, LLP and Kessler Topaz Meltzer & Check, LLP—to serve as counsel for the Settlement Class in accordance with Federal Rule of Civil Procedure 23(g), I provide, as Exhibit 1, a true and correct copy of the Firm's current résumé, and further declare:

McTigue Law's Efforts in This Litigation

3. McTigue Law LLP, the only firm among proposed counsel for the Settlement Class that primarily specializes in litigating complex class actions under ERISA, filed the *Carver* action on December 19, 2012, and subsequently filed the related *Fletcher* action on July 22, 2014.

4. Collectively, the named plaintiffs in *Carver* and *Fletcher* represent four large employee benefit plans with more than 490,000 participants and beneficiaries.

5. The firm has zealously litigated its clients' claims in the above actions, from filing and amending the pleadings, defending against two motions to dismiss and devoting significant amounts of time and resources to a discovery process that saw the production and analysis of more than 25 million pages of documents.

6. The firm's lead partner, Brian McTigue, participated in and attended 13 depositions in either a lead or supporting capacity, including as lead in a 30(b)(6) deposition of

Defendant's representative for computer database systems holding ERISA Plan data, took part in the mediation process and attended the mediation sessions.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on March 27, 2015 in Washington, D.C.

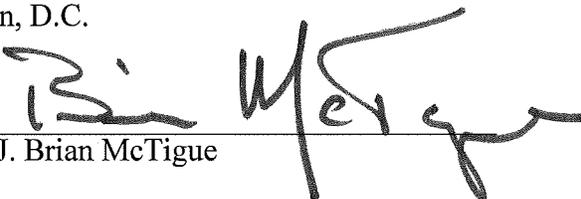

J. Brian McTigue

EXHIBIT 1

McTIGUE LAW LLP
4530 Wisconsin Ave, NW
Suite 300
Washington, DC 20016

McTigue Law LLP represents participants in traditional pension plans, 401(k) salary deferral plans, savings plans, and Employee Stock Ownership Plans (ESOPs). The firm confines itself to the litigation of complex class actions, the majority of which are brought under the federal Employee Retirement Income Security Act (ERISA). We represent and protect employees in pension plans when those plans have lost assets because the employer-fiduciaries, trustees and investment managers fail to meet their obligations under ERISA.

We are likely the first law firm, years before the Enron, WorldCom, and Global Crossing scandals, to recognize the need for lawyers focused on litigation to protect plan participants against the growing risks of imprudently-invested 401(k) plans. Participants in these plans directly bear the investment risks of the plans' investments.

The Firm's representative cases include the following in which the firm served as lead or co-lead class counsel and secured multimillion dollar awards for ERISA plans and their participants:

- *Figas v. Wells Fargo & Co.* (Wells Fargo ERISA Litig.), No. 08-04546 (D. Minn.). This litigation involved allegations of breaches of ERISA fiduciary duties and prohibited transactions where defendants invested retirement plan savings in proprietary mutual funds with high fees and poor performance. A \$17.5 million award was recovered for the plan.
- *Ellen Stoodly Broser v. Bank of America, et al.*, 08-cv-2705-JSW, This case involved allegations that Bank of America breached its fiduciary duties as trustee of thousands of small, family trusts by imprudently choosing to uniformly place trust assets in its own high-fee proprietary mutual funds.
- *Presley v. CHH, et al.*, 97-cv-04316 (SC) (N.D. Cal.) (bankrupt plan sponsor). CHH, was the Los Angeles holding company for the Broadway, Emporium, Capwells, and Weinstocks department stores, with more than 24,000 employees in its 401(k) plan. More than half of the plan's assets were invested in CHH stock when the chain filed for bankruptcy. Nearly \$39 million was recovered for the plan from defendants.
- *Blyler v. Agee, et al.*, CV97-0332-(BLW) (D. Idaho) (bankrupt plan sponsor). This litigation involved pension plans with 8,000 employees sponsored by Morrison Knudsen Corporation which declared bankruptcy in 1996.
- *Koch v. Dwyer, et al.*, 98-cv-5519 (RPP) (S.D.N.Y.) (bankrupt plan sponsor). This litigation involved JWP, Inc., a S&P 500 company that declared bankruptcy. A \$6.4 million settlement was reached in 2002 on behalf of JWP's pension plan.

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- *In re CMS Energy ERISA Litig.*, 02-cv-72834 (GCS) (E.D. Mich.). This litigation, on behalf of more than 10,000 pension plan participants, involves a former Detroit based utility. A \$28 million settlement was reached in this litigation.
- *In Re McKesson HBOC, Inc. ERISA Litig.*, C 00-20030 (RMW) (N.D. Cal.). Plan with 8,000 participants. \$23 million settlement.
- *Sherrill v. Federal Mogul Corp. Ret. Programs Committee, et al.*, 04072949 (E.D. Mich.) (plan sponsor bankruptcy with asbestos liability). Plan with 12,000 participants. \$12.75 million settlement.

Overall, the firm has prosecuted cases on behalf of hundreds of thousands of plan participants recovering more than \$150 million. Many lawsuits involved allegations of fiduciary breaches with respect to a pension plan sponsored by a S&P 500 or similar company.

The firm currently litigates numerous other cases throughout the United States on behalf of thousands of other pension plan participants, in both public and private sector plans, who have lost retirement assets due to a trustee's or fiduciary's breach of fiduciary duty. These cases include the following ERISA actions:

- *Henriquez v. State Street Bank and Trust Company et al*, (DMA), Case No. 1:11-cv-12049-MLW: Alleging breaches of fiduciary duty related to defendants' pricing and execution of foreign exchange transactions for funds invested in by plan participants.
- *Leber v. CitiGroup*, 07-09329 (S.D.N.Y.): Alleging breaches of fiduciary duty where defendants invested retirement plan savings in proprietary mutual funds with high fees and poor performance.
- *Brown v. Suntrust Banks, Inc., et al.*, 14-029565 (N.D. Ga.): Alleging breaches of fiduciary duty where defendants invested retirement plan savings in proprietary mutual funds with high fees and poor performance.

The Defendants in these cases include fiduciaries and administrators of 401(k) Plans, corporate boards which appointed and failed to monitor the fiduciaries and administrators. The lawsuits allege a variety of federal pension law violations, including that fiduciaries of these pension plans failed to perform fiduciary duties to the funds and their pension plan members as required by federal law, participated in others breaches of fiduciary duty, and engaged in prohibited transactions, involving conflicts-of-interest, under federal pension law.

The events beginning in late 2001 and the first half of 2002, including the financial collapse and bankruptcy filings by ENRON, WorldCom, and Global Crossing confirmed the risks that participants in defined contribution pension plans are exposed to because of large portfolios of Company Stock. The nature of this risk to 401(k) plan participants was brought to

McTIGUE LAW LLP

the attention of the United States Department of Labor in 1997 by Mr. McTigue when he was invited to testify before the Department's pension fund Advisory Council.

PRINCIPAL ATTORNEYS

J. Brian McTigue

Mr. McTigue founded McTigue Law LLP. Prior to private practice, Mr. McTigue was counsel to committees of the United States House of Representatives and Senate. His legislative work included investigations and legislation pertaining to federal pension law and pension fund investment.

As a Senate Legal Counsel for Special Projects, Mr. McTigue was responsible 1996 for initiating the first legislative proposal to reduce the percentage of sponsoring corporation stock permitted in the portfolios of 401(k) and similar defined contribution pension plans. The bill represented the first congressional recognition of problems with the typical pension plan of the baby boom generation. Although opposed by many employers and employer groups, several of the concepts embodied in the bill became law. Since, then, Mr. McTigue has assisted congressional offices with draft legislation which would give ERISA fiduciary breach claims greater protection when companies sponsoring plans file for bankruptcy.

Mr. McTigue's congressional investigation of Michael Milken, Drexel Burnham Lambert and the junk bond market was a basis for *FDIC v. Milken, et al.* brought by the Federal Deposit Insurance Corporation and settled for \$1.3 billion. His congressional investigations of the funding of pension plans through annuities issued by the California-based Executive Life Insurance Company identified issues giving rise, when Executive Life later became insolvent several years later, to a plethora of private class actions and United States Department of Labor litigation alleging violations of federal pension law, the Labor Department's adoption of new fiduciary standards for pension plan termination annuities, and to the passage of the Pension Annuitants Protection Act.

Prior to his legislative work, Mr. McTigue was an investigative reporter and television news producer for ABC and NBC News. Before that he was a reporter, reporting from Europe and Africa. His investigative reporting has recognized with Emmys and a George Polk Award.

Mr. McTigue is a graduate of Notre Dame and the Golden Gate University Law School, San Francisco, California. Mr. McTigue is a member of the District of Columbia Bar and the State Bar of California. He is also a member of the Bars of the United States District Courts for the District of Columbia, Northern District of California, and the Eastern District of Michigan.

Mr. McTigue is from Fort Dodge, Iowa.

McTIGUE LAW LLP

James A. Moore

Mr. Moore is a partner with the firm. He has been a litigator for fifteen years, focusing on ERISA class action litigation in both trial and appellate courts for almost a decade. Prior to joining McTigue Law LLP, Mr. Moore was an attorney with the class action firm Malakoff, Doyle, & Finberg, P.C., which, together with McTigue Law LLP, pioneered the pursuit of ERISA class action suits on behalf of employees who lost retirement savings due to their plan fiduciary's imprudent investment in their employer's stock.

Mr. Moore has played a major role in securing multimillion dollar awards for ERISA retirement plan participants in numerous cases throughout the country, including *Dickerson v. Feldman* (Solutia Corp. ERISA Litig.), No. 1:04-CIV-07935 (S.D.N.Y.); *In re RCN Corp. ERISA Litig.*, No. 04-5068 (D.N.J.); *Koch v. Dwyer* (EMCOR Corp. ERISA Litig.), No. 98CIV5519 (S.D.N.Y.); and *Blyler v. Agee* (Morrison Knudsen Corp. ERISA Litig.), No. 97-00332 (D. Idaho).

Before turning his energies to class action and ERISA litigation, Mr. Moore gained broad experience in a wide variety of general civil litigation, including insurance-related litigation, and also worked for the United States Environmental Protection Agency and the National Audubon Society.

Prior to his law career, Mr. Moore earned a Ph.D. in philosophy from the University of Pittsburgh, which is internationally recognized for the excellence of its philosophy department. He was awarded the prestigious Mellon Pre-Doctoral Fellowship in his first year of study, and was awarded a Teaching Fellowship to teach logic and philosophy during the remainder of his studies. He earned his Bachelor of Arts from Indiana University-Bloomington, graduating Phi Beta Kappa and with honors.

Mr. Moore's publications include *Taking Legal Action to Protect Policyholders' Ownership Rights in the Wake of the Continuing Trend Toward Insurance Company Demutualization*, ATLA Insurance Law Section Newsletter, Fall 2000 (co-author with Ellen M. Doyle), and publications in scholarly journals including the *Harvard International Law Journal*.

Mr. Moore is a 1994 graduate of the University of Michigan Law School. He is admitted to practice in the District of Columbia.

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